COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Investigation by the Department on its own Motion as to the propriety of the rates and charges set forth in M.D.T.E No. 17, filed with the Department on May 5, 2000 to become effective June 4 and June 6, 2000 by New England Telephone and Telegraph Company d/b/a Bell Atlantic - Massachusetts	D.T.E. 98-57, Phase III

VERIZON MASSACHUSETTS' COMMENTS

REGARDING MOTIONS FOR RECONSIDERATION

The Department should deny the Motions for Reconsideration filed by Rhythms Links Inc. ("RLI"), Digital Broadband Communications, Inc. ("DBC") and WorldCom, Inc. ("WorldCom") on October 19, 2000, in this proceeding. Those Motions concern three distinct issues: (1) application of an administration and support charge under a CLEC-owned splitter arrangement; (2) "real-time" direct access to Verizon Massachusetts' ("Verizon MA") Loop Facilities Assignment and Control System ("LFACS") database by competitive local exchange carriers ("CLECs"); and (3) the use of the unbundled network element platform ("UNE-P") under a line sharing arrangement. None of those Motions satisfies the Department's standard for reconsideration.(1) Therefore, the Department must uphold its rulings on the issues raised in those Motions, as set forth in its September 29, 2000, Order.

I. ARGUMENT

A. RLI Erroneously Argues that the Department Should Reconsider Its Decision Allowing Verizon MA to Apply a Splitter Administration and Support Charge.

In its Order, the Department determined that Verizon MA's application of a monthly administration and support charge for Options A and C is reasonable.(2) Order at 122. The Department found that "[p]ursuant to the FCC's TELRIC method, ILECs are

entitled to recover a 'reasonable allocation of forward-looking common costs' in their provision of UNEs" and that "ownership of equipment is irrelevant to the appropriate recovery of these costs." Order at 122. Accordingly, the Department rejected arguments made by some CLECs that overhead costs are not applicable to Option A, where CLECs own the splitters.

In its Motion, RLI reargues the point that Verizon MA should not be permitted to apply an annual carrying charge factor ("ACCF") to recover its overhead costs where Verizon MA does not own the splitter investment. RLI provides no new evidence to support its claims, but rather relies on a recent decision in which the New York Public Service Commission ("NYPSC") upheld its earlier ruling denying the application of an administration and support charge for Option A, pending the outcome of its Module 3 proceeding on line sharing rates. See Case 98-C-1357, Order Denying Petition for Rehearing, issued October 3, 2000. RLI, however, ignores the fact that this ruling is not conclusive.

Indeed, the NYPSC expressly acknowledged that "it may well be that there is no reason to distinguish Scenario A and Scenario C with respect to [the] recovery [of wholesale marketing and other support costs]." The NYPSC further concluded that the record "does not permit a definitive resolution of this question" and that Verizon may "pursue recovery of these non-maintenance components of the charge" in the Module 3 proceeding. Therefore, this is clearly not a closed issue in New York, as RLI's Motion incorrectly suggests.

Likewise, RLI's contention that of all the collocation equipment, "splitters are singled out as the basis for payment" is wrong. RLI Motion at 5. A factor-based approach for cost recovery is a longstanding, accepted Department practice for allocating common overheads and was used in its cost studies adopted by the Department in the Consolidated Arbitrations. Verizon MA Reply Brief, at 11. The ACCF was developed in that proceeding by removing all retail costs and is thus specific to wholesale operations. Id. at 12.

In this case, the ACCF is applied in the calculation of the splitter administration and support charge as a means of allocating administrative/wholesale marketing costs (e.g., product management), other support expenses and common costs under Options A and C. That factor captures and recovers costs associated with a wide range of activities, including negotiating CLEC agreements, developing new CLEC products and services, working to improve the CLECs' existing services, developing and updating CLEC handbooks, training materials and Web site information. Id.

Non-line sharing CLECs contribute to the recovery of wholesale marketing costs through the ACCF, and it would be unfair and discriminatory to exempt CLECs under the Options A and C line sharing arrangements from bearing their fair share of those costs, which are incurred to support Verizon MA's wholesale operations. Likewise, there is no basis for exempting CLECs choosing Option A from paying administration and support charges because the underlying costs are incurred to the same extent as CLECs selecting Option C. Verizon MA Reply Brief, at 13. The cost recovery mechanism should be as neutral as possible between the two available splitter options. Accordingly, the Department's decision to allow Verizon MA to apply a monthly administration and support charge for the Option A (CLEC-owned splitter) arrangement is reasonable, consistent with Department practice, and should be upheld.

B. DBC Erroneously Contends that the Department Should Reconsider Its Decision Because It Allows Verizon MA to Delay Complying with Its Legal Obligations to Provide "Real-Time" Electronic Access to the LFACS Database.

The Department concluded in its Order that Verizon MA was not required to make the LFACS database available to CLECs in light of ongoing discussions between Verizon NY and CLECs in the OSS collaborative proceeding regarding direct access to the loop information. Order at 25. This is a reasonable result that enables the CLECs to

reach a regional solution in this matter.(3)

DBC's argument that the Department's Order delays unnecessarily Verizon MA's legal obligation to provide third-party access to LFACS is unfounded and contradicted by related decisions of the Federal Communications Commission ("FCC"). Likewise, DBC's reliance on a Pennsylvania decision to support its argument is misplaced. DBC Motion, at 6-7.

The FCC in its UNE Remand Order(4) clarified its existing rules by stating that "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent…". UNE Remand Order at ¶427. The FCC listed the specific underlying loop information that is required to be provided to CLECs. Id. The FCC, however, rejected Covad's request that incumbent LECs be required "to catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself." Id. at ¶429. The FCC found that

…[i]f an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. We find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. In addition, we expect that incumbent LECs will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.

Id.

Contrary to DBC's claims, Verizon MA does not have a legal obligation to provide CLECs with direct "real-time" access to the LFACS database because it does not provide such access to its own retail operations.(5) As the FCC stated, "[t]o the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information." Id. at ¶431. Similarly, the Pennsylvania Public Utility Commission ("PA PUC") seeks "competitive parity" for CLECs in accessing loop information. Thus, where "real-time access" to loop information is not available to Verizon PA's retail operations on a fully automated basis, the provision of loop information by another mechanized or manual method "that will most quickly and efficiently enable the CLEC to ascertain the relevant loop characteristics" would be acceptable. Opinion and Order, PA Dkt. No. P-00991648, P-00991649, at §VII.B, pp. 11-12 (August 26, 1999).

Verizon MA has met the nondiscrimination safeguards set forth in the UNE Remand Order because access to loop information is available to Verizon and CLECs under the same terms and conditions.(6) Accordingly, Verizon MA has complied fully with its legal obligations, and the Department has correctly ruled that direct access to the LFACS database by CLECs is not required at this time.

C. WorldCom Incorrectly Asserts that the Department Should Reconsider Its Decision Regarding Line Sharing Between CLECs or Under UNE-P Arrangements Because It Conflicts with Federal Requirements.

In is Order, the Department rejected the CLECs' request that a UNE-P arrangement provided by Verizon MA must remain intact where the CLEC provides both voice and data services over a single loop. Order at 39-40. Likewise, the Department found

that Verizon MA is not legally obligated to provide line sharing between CLECs. The Department's rulings are well reasoned and consistent with the FCC's decisions and, therefore, must be upheld.

WorldCom's rationale for reconsideration is based on a convoluted argument that the Department has misconstrued the terms "line splitting" and "line sharing" and has thus erroneously concluded that Verizon MA has no legal obligations to provide "line sharing" over a UNE-P arrangement for single or multiple CLECs.(7) WorldCom's argument, however, is a pointless exercise in semantics and totally ignores the clear language of the FCC on this issue.

For instance, WorldCom admits that the UNE-P will be interfered with and physically altered if the loop is split by DSLAM and splitter equipment that is interpositioned to provide voice and data services. WorldCom Motion at 4, 8. Nevertheless, WorldCom contends that although the UNE-P does not remain physically intact, it should be treated as if it is because it is "functionally intact." Id. That contention is fallacious and directly contradicts the FCC's findings on this matter.

In quoting the SBC Order,(8) WorldCom omits the relevant portion of the FCC's ruling on providing line-sharing arrangements in connection with UNE-P. The FCC remarked that:

[I]ncumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter. . . . For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service.

SBC Order at ¶325 (emphasis added).

The FCC determined that the incumbent LEC would facilitate CLECs' line splitting by replacing the UNE-P with separate components (e.g., a loop, port, and other applicable piece parts) to enable the CLEC to provide voice and data over a single line. The incumbent LEC is not, however, obligated to maintain a fictitious UNE-P once it is physically disassembled.

As indicated by the FCC, "the [UNE] platform" is a "combination of unbundled loops, switches, and transport elements." UNE Remand Order at ¶12. When the CLEC splitter and DSLAM is installed in the middle of the UNE-P arrangement to provide data capability, that combination no longer exists.(9)

Accordingly, the Department's ruling that Verizon MA is not required to preserve the UNE-P under a line splitting arrangement is correct, and WorldCom's Motion should be denied.

Likewise, WorldCom's Motion must fail because Verizon MA is clearly not required to provide line sharing when it is not the voice provider. The FCC found that:

[L]ine sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on higher frequencies. The record does not support extending line sharing requirements to loops that do not meet the prerequisite condition … Accordingly, we conclude that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service . . .. We note that in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service. Similarly, incumbent

carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.

Line Sharing Order(10)

at ¶ 72 (emphasis added).

That limitation on the scope of the incumbent LEC's obligation to provide line sharing in instances where the incumbent LEC provides the voice service is reiterated in FCC regulations,(11) as well as upheld in the FCC's SBC Order.(12) This is also supported by the underlying competitive considerations to preserve competitive access to the high frequency (data) portion of the loop when the incumbent LEC is already providing the voice service. Line Sharing Order at ¶56. Accordingly, contrary to WorldCom's unfounded claims, the Department's analysis is sound, and its decision should not be disturbed.

C. CONCLUSION

For the foregoing reasons, the Department should deny the Motions for Reconsideration filed by RLI, DBC and WorldCom. Those Motions fail to meet the Department's legal standard for reconsideration. Moreover, the arguments made in those Motions are seriously flawed and provide no substantive basis for review.

Respectfully submitted,

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1. 1 The Department's standard of review requires that a motion for reconsideration "should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered." Boston Edison Company,

D.P.U. 90-270-A, at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 85-270-C, at 12-13 (1987). Reconsideration is also appropriate when the decision was the result of the Department's mistake or inadvertence, or when parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. Massachusetts Electric Company, D.P.U. 90-261-B, at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J, at 2 (1989); Boston Edison Company, D.P.U. 1350-A, at 5 (1983); Re: Petition of CTC Communications Corp., D.T.E. 98-18-A, at 2, 9 (1998). It should not be used to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A, at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A, at 3 (1991). In fact, reconsideration of previously decided issues is only granted when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision made after review and deliberation. Id.

2. 2 It should be noted that the Department required Verizon MA to recalculate the administration and support charge for Option A by removing the splitter installation investment from the entire splitter investment to which the ACCF is applied to derive the rate. Order at 122. This results in a revised monthly administration and support charge for Option A of $17.13. See Verizon MA's November 2, 2000, tariff filing (Tariff No. 17, Part. M., Sec. 5.2.10).

3. 3 As noted in Verizon MA's Initial Brief, Verizon NY obtained CLEC data requirements and worked with Telcordia, which controls these systems, to develop a proposal plan and cost estimate. Verizon MA Initial Brief, at 49 n.43. That proposal was presented to the CLEC industry for review several months ago. Verizon is awaiting their response, and will work with the CLEC industry to implement that plan if the CLECs decide to purchase the proposed package. See also Exh. VZ-MA 4, at 68-69; Exh. DTE-BA-MA 2-18.

4.

4 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("UNE Remand Order").

5. 5 The LFACS database was designed to manage inventory, not to provide loop make-up information. As explained in Exh. DTE-BA-MA 1-33, to the extent that additional information is entered into LFACS for some loops, it is because a manual loop make-up was performed on that loop or terminal at some time in the past. Accordingly, many of the loops for which CLECs may be seeking data will not be found in LFACS because the database does not contain 100 percent of loop activity.

6.

6 The process that will be used by Verizon's separate affiliate and the CLECs for loop qualification on a mechanized and manual basis is described in Exh. RLI/CVD-BA 25; see also Exh. VZ-MA 3, at 52.

7.

7 The FCC characterizes "line splitting" as the situation where both the voice and data service will be provided by competing carrier(s) over a single loop" (not the incumbent LEC) (¶ 324).

8.

8 In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a

Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order (rel. June 30, 2000) (hereinafter "SBC 271 Order").

9. 9 What WorldCom is, in fact, requesting is a new UNE combination that includes voice and data on the same loop, which Verizon MA is not legally obligated to provide.

10. 10 See Third Report and Order in CC Docket 98-147 and Fourth Report and Order in CC Docket 96-98, released December 9, 1999 (hereinafter referred to as "Line Sharing Order").

11. 11 See 47 U.S.C. § 319(h)(3) ("[a]n incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.") (emphasis added). See Verizon MA Initial Brief, at 35 n. 33.

12.

12 The FCC stated that "under the Line Sharing Order, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access." (¶324).